

HOTLINE TRUTHS: ISSUES RAISED BY RECENT AUDITS OF DEFENSE CONTRACTING

HEARING BEFORE THE SUBCOMMITTEE ON CONTRACTING AND WORKFORCE OF THE COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

HEARING HELD
FEBRUARY 25, 2016



Small Business Committee Document Number 114-046
Available via the GPO Website: www.fdsys.gov

U.S. GOVERNMENT PUBLISHING OFFICE

99-445

WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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THURSDAY, FEBRUARY 25, 2016

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Richard Hanna [chairman of the Subcommittee] presiding.

Present: Representatives Hanna, Kelly, and Takai.

Chairman HANNA. Good morning. The hearing will come to order.

The Small Business Act contains important protections for small companies that provide services to our men and women in uniform. Existing law ensures that we have a vibrant community of small contractors ready to provide innovative and cost-effective solutions. However, if the statutory provisions of the Small Business Act are not observed, those benefits are lost. While this Subcommittee hears many stories of waste, fraud, and abuse in the small business prime contracting and subcontracting programs, fear of reprisal from contractors makes it hard to document and quantify those damages. Today, we are going to hear or learn about what happens when a hotline complaint was filed with the Department of Defense Office of the Inspector General alleging abuse of the small business prime contracting and subcontracting programs.

While the two audits we will discuss today do not themselves represent evidence of a widespread problem, they do document anecdotally what we hear and should not be dismissed as complaints from unsuccessful offerors. There are real problems facing small business contractors. The Marine Corps documented failure to comply with statutory requirements concerning the approval and oversight of small business and subcontracting plans has resulted in significant harm to the small business community. Continue to fail to provide mandatory oversight of small business subcontracting plans has had real consequences. It allows bad actors to overpromise and underdeliver and small business subcontracting opportunities. It harms complainants responsible for companies as those who overpromised often receive an advantage when their offers are evaluated. It hurts small business that we do not receive the opportunity to compete with other subcontractors. It undermines the industrial base as there are fewer sources of supply. It means higher prices, less competition, and less innovation. It means that our warfighters do not always get the best product or

solution. Finally, a few small business subcontractors ultimately translate into fewer small business contractors, less competition, and less innovation.

I hope today's witnesses will be able to help us understand what has occurred and what is occurring and what it means for small contractors. I also hope that we can explore this through the proposal of H.R. 4341, the Defending America's Small Contractors Act of 2016.

I now yield to Ranking Member Takai for his opening statement.

Mr. TAKAI. Thank you, Mr. Chairman. Thank you for holding this hearing today.

Each year the Federal Government spends almost half a trillion dollars on goods and services for its daily operations. Recognizing the importance of maintaining a varied and strong industrial base to support these needs, it has long been the policy of Congress to ensure the fair proportion of these purchases, whether they be for prime contracts or subcontracts, be awarded with small businesses. In some areas, there has been success in awarding contracts to small firms. In fiscal year 2014, small primes received over \$90 billion, amounting to almost 25 percent of the contracting dollars. As a result, the government again met its small business contracting goal, and based on preliminary reports, it appears this goal was achieved in fiscal year 2015 as well. However, prime contracting is only one part of the equation to becoming successful in the Federal marketplace. For many businesses, subcontracts are just as vital. These opportunities serve as an entry point for firms to the Federal marketplace. Subcontracts are a way for firms to increase their capacity enough to eventually serve as prime contractors. They also help small businesses gain valuable insight into what is required when the Federal Government is your client.

Recognizing the importance of subcontracts, the Small Business Act requires the SBA to set goals for subcontracting dollars awarded to small businesses, yet the Committee has seen the government-wide goal lowered from 36 percent in 2012 and 2013, to just over 34 percent in 2014. Despite the decrease, the goal is still not being met, with only 33 percent of the subcontracting dollars awarded to small firms.

But even these numbers are deceiving, as the percentage is based only on the subcontracting dollars reported, so it is unfortunately not surprising to see the results of the DOD IG's audits at the center of our hearing today. Prime contractors are not reporting their subcontracting dollars, and contracting officers are not holding these firms accountable for their subcontracting goals. Even more egregious is the fact that some primes were awarded contracts without a subcontracting plan at all. This is simply unacceptable.

I am further concerned that the deficiencies found by the audits are not limited to these Marine offices. With a contracting office in Hawaii, I am particularly interested to hear from the witnesses how widespread these problems are within the Marine Corps. I am particularly concerned with the decrease in subcontracts being let to 8(a) companies, both competitively or direct awards by programming offices nationwide. We have seen subcontracts that have been

historically let within the 8(a) pool curtailed and moved to another contracting vehicle in which most small businesses do not qualify.

This Committee has continually heard from firms working with other agencies that it is becoming increasingly difficult to find subcontracting opportunities as primes take on more of the work themselves. Agencies and contracting officers must do better to ensure that small businesses have access to these opportunities. We know that subcontracting is an important part of not only our industrial base but overall economy. Subcontracts spread the benefits of a Federal contract further into many communities, creating jobs and increasing economic development.

It is my hope that this Subcommittee can continue to look into the decline in subcontracting to determine what can be done to fix the system, hold prime contractors accountable to their goals, and open up more Federal opportunities to small businesses. I thank all of the witnesses for being here today and I yield back.

Thank you, Mr. Chair.

Chairman HANNA. Thank you.

If other members have opening statements prepared, I ask they submit them for the record.

Without objection, so ordered.

You know the basics. You have 5 minutes but we will be, you know, we want to hear what you have to say, so we will be lenient.

Our first witness today is Mr. Michael Roark, the Assistant Inspector General for Contracting Management and Payment Office, Inspector General Department of Defense. Our second witness is Mr. Chuck Spence, President of the Association of Procurement Technical Assistance Centers. For your benefit it is called PTAC. She is a wonder with acronyms. She has acronyms for acronyms; right?

Anyways, thank you for being here. Mr. Roark, you may begin.

STATEMENTS OF MICHAEL ROARK, ASSISTANT INSPECTOR GENERAL, CONTRACTING MANAGEMENT AND PAYMENT OFFICE, INSPECTOR GENERAL DEPARTMENT OF DEFENSE; CHUCK SPENCE, PRESIDENT OF THE ASSOCIATION OF PROCUREMENT TECHNICAL ASSISTANCE CENTERS

STATEMENT OF MICHAEL ROARK

Mr. ROARK. Good morning, Chairman Hanna, and Ranking Member Takai, and distinguished members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss our two audits of Marine Corps small business contracting.

We initiated the two audits based on a Defense hotline complaint alleging that the Marine Corps Regional Contracting Office, National Capital Region, or RCO-NCR, and the Marine Corps Systems Command, or MCSC, did not ensure that small businesses were awarded a sufficient number of contracts and did not hold large prime contractors accountable for meeting small business subcontracting goals.

Our objectives for the two audits were to determine whether RCO-NCR and MCSC provided small businesses the opportunity to be awarded prime contracts and held prime contractors accountable for meeting small business subcontracting goals. During the audits,

we reviewed a total of 86 contracts valued at approximately \$1.6 billion of the 766 contracts valued at approximately \$3.3 billion that RCO-NCR and MCSC awarded to other than small businesses in fiscal years 2011, 2012, and 2013.

Overall, we found in the two audits that RCO-NCR and MCSC generally provided small businesses with the opportunity to compete for prime contracts. However, contracting officials did not ensure that prime contractors provided small businesses adequate subcontracting opportunities.

First, regarding opportunities provided to small businesses to compete for contracts, RCO-NCR and MCSC generally provided small businesses with the opportunity to compete for prime contracts. At RCO-NCR, contracting officials conducted market research and advertised solicitations for 19 contracts, while MCSC did the same for 21 contracts that we reviewed. After sending request for information to identify the companies capable of providing services and receiving responses from both large and small businesses, contracting officials and small business representatives from both RCO-NCR and MCSC determined whether small businesses demonstrated that they possessed the knowledge and capabilities to perform the requirement. For 20 RCO-NCR and 16 MCSC contracts we reviewed that were awarded a sole source, both commands prepared justifications using other than full and open competition as allowed by the FAR.

Second, I will discuss whether small businesses received subcontracting opportunities. RCO-NCR and MCSC contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities. Specifically, RCO-NCR contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for six of the seven contracts we reviewed. Specifically, RCO-NCR contracting officials awarded four contracts without requiring a subcontractor contracting plan, or with a subcontracting plan that did not include small business subcontracting goals. Two contracts which had a subcontracting plan with small business goals but contracting officials did not monitor whether the contractor met the goals.

These problems occurred because RCO-NCR did not have policies and procedures for evaluating and approving subcontracting plans or for monitoring contractor compliance with those plans. MCSC contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for 12 of the 19 prime contracts that we reviewed. Specifically, MCSC contracting officials did not track compliance with small business subcontracting goals for four contracts. They did not determine why large businesses were not meeting their small business subcontracting goals for two contracts, and they awarded six contracts without subcontracting plans or the required determination and approval. In addition, MCSC contracting officials awarded two prime contracts with commercial subcontracting plans without verifying whether the plans had been approved by a contracting officer.

These problems occurred because MCSC did not have adequate internal guidance for awarding contracts with subcontracting plans

or for administering the subcontracting plans. Additionally, MCSC did not implement effective internal review procedures for approving and administering the subcontracting plans.

On our two reports, we made a total of 13 recommendations to RCO-NCR and MCSC to address the deficiencies identified during the audits. Specifically, we made four recommendations to RCO-NCR and the command has implemented all the recommendations. We made nine recommendations to MCSC and the command agreed with each recommendation and is currently in the process of completing corrective actions.

This concludes my statement, and I would be happy to answer any questions you may have for me on our two audits.

Chairman HANNA. Thank you.

Mr. Spence?

STATEMENT OF CHUCK SPENCE

Mr. SPENCE. Thank you, Chairman Hanna, Ranking Member Takai, and distinguished members of the Subcommittee. Thank you for this opportunity to respond to reports from the DOD's Office of the Inspector General regarding failures to hold large prime contractors accountable for meeting small business subcontracting goals.

I am Chuck Spence. I am the Deputy Director of the Utah PTAC, and I am the President of the Association of Procurement Technical Assistance Centers. UPTAC is the professional organization that represents 98 PTAC programs throughout the United States. PTACs assist local small businesses at little or no cost, preparing them to become capable government contractors. Last year, we helped over 60,000 small businesses when government contracts and subcontracts at the value of \$12 billion, so we are pleased to report that our ROI is pretty strong.

In addition to helping small businesses secure prime contractors, PTACs are deeply engaged in subcontracting issues. Not only do we help small businesses identify subcontracting opportunities, connect with and market to prime contractors, and generally become procurement-ready subcontractors, we are often contacted by primes for assistance with developing subcontracting plans and locating small business vendors. Every day we confront with our clients the challenges of the subcontracting environment.

My testimony today reflects input from some of our most experienced procurement professionals. We are not at all surprised by the OIG findings. We suspect that the problems identified that Mr. Roark mentioned, the lack of adequate policies, insufficient training for contracting officials, and failure to monitor compliance are common across Federal agencies, because the root causes are not unique. These root causes are an unrealistic overreliance on contracting officers to protect the interests of small businesses with insufficient support and resources to do so, in an environment with little meaningful incentive for contractors to comply with subcontracting requirements. The consequence is likely a widespread loss of subcontracting opportunities for our small businesses.

We applaud Chairman Chabot, Ranking Member Velázquez, and the House Small Business Committee for the ambitious effort to address these issues through H.R. 4341. The bill's comprehensive

approach to clarifying the language and definitions of contracting provisions in the Small Business Act is much needed.

I would like to comment on a number of provisions of this legislation that we think are particularly relevant. The Acquisitions Workforce is enormous, disparate, and often overworked. It is little wonder that enforcing small business contracting requirements might be prone to neglect. SBA Procurement Center representatives and commercial market representatives play a critical role enabling increased opportunities for small businesses and we believe that this Committee is absolutely right to expand and clarify those responsibilities. Providing PCR's the authority to review any solicitations for a contract or task order, providing PCR's the authority to review any solicitations for a contract or task order, clearly articulating the responsibilities of commercial market representatives with regard to subcontracting, and allowing both PCR's and CMR's to delay up to 30 days the acceptance of subcontracting plans if they fail to provide maximum opportunities for small businesses are very important steps and we, the PTAC, enthusiastically support them.

We are concerned, however, about the level of effectiveness that can reasonably be expected from PCR's and CMR's if their ranks are not sufficient to do the job. SBA has just 27 CMR's and 48 PCR's to service the entire country. PCR's and CMR's can help avoid subcontracting program failures, such as those discussed in the OIG reports. More importantly, increasing their presence would raise the visibility of and attention to subcontracting issues across the board, a fundamental first step toward increasing opportunities for small businesses.

We encourage you to take whatever action is within your power to support increasing the size of the PCR and CMR workforce to maximize their effectiveness government-wide.

Lack of enforcement of subcontracting requirements is a particular frustration among our small business clients, and we are pleased that H.R. 4341 adds teeth by making failure to comply with reporting requirements a material breach to be reflected in past performance evaluations. Perhaps more important is the stipulation that the SBA provide examples of what would constitute failure to make a good faith effort to comply. We hope that a rigorous test is developed.

On another note, meeting subcontracting goals would be easier if prime contractors had a meaningful stake in their achievement. Finding incentives or disincentives that give primes a clear competitive interest in providing small business opportunities could help shift the balance.

Finally, I must address H.R. 4341's requirements that the SBA provide a list of resources for education and assistance on compliance with contracting regulations. We wholeheartedly agree that many small contractors need such help, but I would be remiss if I failed to highlight that this is exactly the sort of assistance provided every day by 600-plus procurement professionals in 300 offices in every state in the nation. We hope that the SBA will feature PTACs prominently in this list.

In conclusion, UPTAC members believe that there is a tremendous potential for increasing small business contracting opportuni-

ties, and we are very pleased to see the proactive, comprehensive effort represented in H.R. 4341. Thank you.

Chairman HANNA. Mr. Roark, you mentioned that you had 13 different recommendations, four have been adopted, nine are being reviewed for potential adoption, I assume. Do you feel comfortable ticking off those?

Mr. ROARK. Yes. I can start with the first report on RCO-NCR, which was about 11 months ago now, so we have had a little bit more of a time period to track the recommendations. In that report we made four recommendations. Two were on instituting policies and procedures and those were implemented by RCO-NCR in August of 2015. So that is completed.

Chairman HANNA. What was the nature of those?

Mr. ROARK. We recommended that they establish policy to require contracting officers to obtain subcontracting plans from the contractors when required, and we also, in the second recommendation, recommended that they establish policy to require contracting officers to verify that contractors submit these small business contracting reports in eSRS as required. So they instituted policy on both of those in August, and we obtained that and we closed out those recommendations.

Chairman HANNA. Any other, let's see, 11?

Mr. ROARK. Yeah, the third recommendation in the RCO-report was to increase proficiency and background knowledge for contracting personnel to understand their FAR 19 requirements, and command did hold the training class and provided us with the slides and the roster that that did take place. So we closed that recommendation.

Our fourth recommendation was to determine whether contractors—we asked RCO-NCR to determine whether contractors for two contracts made good faith efforts to meet small business subcontracting goals in their subcontracting plans, and if not, determine whether or not liquidated damages could be imposed against the contractors. And RCO-did conduct that review. They came back with a response that noted that they found out through further analysis that the contractors did submit initial subcontracting plans but they were not made a part of the contract file. After reviewing the plans, NCR concluded that both contracts did make a good faith effort to fulfill their subcontracting goals, so therefore, they will not collect any liquidated damages. So what I am planning to do as a follow-up effort to that is just to obtain more information from the Marine Corps and from NCR to determine the basis for that decision.

In the second report, Marine Corps Systems Command, we only issued that report a little over 3 months ago, so there not as much time has gone by there. We made a total of nine recommendations. Two of them were regarding transferring files from one contracting officer to another to make sure that there is no loss of the files there, and we also recommended that the command establish a storage location where they can store contracts for review later if necessary.

One of those suspense dates on the first recommendation was in December of 2015, and we got an update from the Marine Corps about a week ago and they said that they will now expect to com-

plete that in March of 2016. The other one, the second recommendation on establishing a storage location, the suspense date for that is January of 2017. So still a ways to go on that one.

In finding B of the Marine Corps Systems Command Report, we had a total of seven recommendations. The first two were on, again, very similar on whether liquidated damages could be assessed. Those responses from the command are due in April of 2016. We had four recommendations in establishing policies and procedures very similar to the previous report, and for three of those four, the suspense dates were in November of 2015; however, the command notified us that the new suspense date is now April of 2016.

The final recommendation on training, again, to increase proficiency for contracting officials with FAR 19 requirements, their completion date on that was targeted for September of 2016. So that is still a few more months to go before that suspense date.

Chairman HANNA. Do you have a sense that Mr. Roark is on the mark on these? I mean, is there a theme there that you recognize from your work?

Mr. SPENCE. No, I think he is exactly on the mark. I think what we are most impressed with with 4341 is that this is finally putting some teeth into the compliance of these regulations and policies and procedures, so we absolutely agree.

Chairman HANNA. Thank you.

Mr. Takai?

Mr. TAKAI. Thank you, Mr. Chairman.

Mr. Roark, during the course of the audit, you evaluated contracts that were not set aside for small businesses and you found that in many cases there were justifications or market research supporting the decision not to award to a small business. Did your office take an in-depth look at these conclusions to determine their validity, or was it simply a check to ensure that the right paperwork was in the file?

Mr. ROARK. We did conduct an analysis of the documents that were in the contract files. We did not just accept the paper being in the file as being in the file as the final answer. We did scrutinize it. And so we really looked at three different areas. We wanted to take a close look at what each command did for market research to go out and determine what contractors or how many contractors could potentially fulfill the requirement, and in both cases we saw that the commands did this primarily through RFIs or requests for information. So we did analyze those documentations for each contract that was in the file, or the respective contract files for those. We also took a look at advertising, how they advertised the solicitation. We it posted on FedBizOpps and other websites to make it known to potential, both large and small contractors so that they were aware of this procurement? And we saw that they did do that.

Regarding the sole source contracts, we did review the justifications that were listed in the file to determine whether or not they did cite a valid FAR exception. We did not just take the justification at face value; we did scrutinize it.

Mr. TAKAI. Thank you.

Mr. Spence, prior to award, large prime contractors are required to submit subcontracting plans for review. If the contracting officer

finds them to be inadequate, they can actually decide not to award the contract to the business. In your experience, how often are contracts not awarded due to inadequate subcontracting plans?

Mr. SPENCE. That is a very difficult question to answer. It is difficult to quantify it because PTACs, generally speaking, are not privy to that information. We just do not have access to the information. However, I would like to provide some anecdotal information. In my preparations for this hearing I spoke to a contracting officer of over 30 years. He is no longer a contracting officer, and he had this to say to answer your question, Mr. Takai, and I quote, "If a prime contractor is performing well, I do not"—meaning the contracting officer—"I do not want to rock the boat and risk diluting the workflow with subcontractors." That was alarming to me, but he said that is the reality. He said, "A better way to encourage and provide an incentive for prime contractors to be in compliance with their subcontracting plan and submit an individual subcontracting report into the electronic subcontracting reporting system, known as eSRS, is to give them a poor rating in the PPIRS, the Past Performance Information Retrieval System, if they are not in compliance with their subcontracting plan and goals. A poor rating in the PPIRS system may adversely affect their future proposal scores, and he felt that was the better way to address that subcontracting plan issue."

Okay, thank you.

Mr. TAKAI. Mr. Roark, you found that the contract review checklist used at the Marine Corps Systems Command did not have steps included to verify that subcontracting plans, when required, are approved. Could you conclude whether all offices use the same checklist or whether they individually determine if all the required steps in a procurement are made?

Mr. ROARK. So in our two audits we reviewed two contracting offices, RCO-NCR and MCSC, and we found that each of the commands used different methods, different checklists, if you will, so they were not working off the same checklist.

Mr. TAKAI. Okay. Having said that, would a more uniform system make it easier for contracting officers to comply with these subcontracting requirements?

Mr. ROARK. I think that having only looked at two contracting offices, it would be difficult to make that broad of a conclusion across the entire Marine Corps, across all of DOD. I think we would need to do more work on that before we were able to make that conclusion, but I do think you raise an interesting point that I think we could keep in mind in the future.

Mr. TAKAI. Okay, thank you. Thank you, Mr. Chair.

Chairman HANNA. Mr. Kelly?

Mr. KELLY. Thank you, Mr. Chairman and ranking member, and thank you witnesses for being here.

Just going back real quick to Congressman Takai's question, Mr. Spence made a comment about the PPIR system and using that to give low ratings to subcontractors in order to keep them out. And I would like your response to that, please, Mr. Roark.

Mr. ROARK. So the DOD hotline that we received that we based these two audits on alleged that commands were not providing adequate opportunities for small businesses to compete for contracts

and that prime contractors were not providing small businesses with adequate subcontracting opportunities. We really stuck very tightly to those two items that were in the hotline, and so we did not review past performance as part of these two audits. They were not part of the scope of what we did.

Mr. KELLY. I would just say that that is very disconcerting that people would play with the ratings of subcontractors and order, so that is something that I probably would look into because that is important that we not have people artificially rating in the system to keep people out. Which kind of brings me to my next point.

This Committee is focused on making sure that the data in SBA reports is accurate, and accurate information reporting is important not only to small businesses that want an opportunity to contract with the Federal Government, but also plays a role in the budgetary decisions that this body of Congress makes. Mr. Roark, I understand that your office found instances of contracting officials at both the National Capital Region (NCR) and the Marine Corps Systems Command, miscoding the size of small business contractors. Were you able to get information on why these businesses were miscoded, and was it a lack of training or not having the information to properly code them?

Mr. ROARK. During our two audits we found for RCO-NCR there were a total of 11 contracts that were miscoded, and for MCSC it was a total of 43 contracts. So in all, it was 54 contracts that we were aware of. In each case, these were contracts that were listed as other than small businesses in the system, although they were really awarded to small businesses. So it was pretty consistent results there that we were not putting the right code in in each of those cases to recognize that those contracts were awarded to small businesses. When we asked the question as to why that occurred, we heard a lot of human errors. In the FPDS, you really have two options to pick from, either small business or other than small business, and it was just a matter of human error in selecting the wrong field.

Mr. KELLY. How much of that human error do you—I guess, how much do you think that is lack of training or lack of the people who are inputting the data and the people who are out there determining who gets the contract, how much is just a lack of training so that they are going out there and doing this without the proper training to start with?

Mr. ROARK. Well, I think we made recommendations to increase awareness and proficiency through training. We also took a two-prong approach to also recommend policy and procedure issues, so I would probably say it is both of those.

Mr. KELLY. Then just very briefly, Mr. Spence, would you also weigh in the importance of having accurate information when they judge our small business, small contractors and their competitiveness, what you have seen and how that affects you?

Mr. SPENCE. Well, obviously, to have accurate information is critical, and we would hope that with Mr. Roark's recommendations that the training, additional training that hopefully the contracting officers, PCRs, and CMRs would receive because of this audit would be in place and would correct those types of problems.

Mr. KELLY. I thank both of you witnesses again for being here, and Mr. Chairman, thank you for having this meeting. And I yield back.

Chairman HANNA. Mr. Roark, the MCSC's suspense date is slipping from November-December to March-April. Anything you want to say about that? I am just curious why that is.

Mr. ROARK. So after a report is issued, we have a follow-up process that we enter into to ensure that the recommendations are addressed and that the suspense dates are met. It is a combination of the audit team who conducts the audit, and we have follow-up specialists as well. So this is a normal process that any report goes through, and normally about 6 months after the final report is issued is when we become a little bit more aggressive in checking on the progress that has been made over that 6 month period. However, in this case, we asked the Marine Corps for an update at about the 3 month mark, and they provided their response to me on February 20, so just a few days ago, and four of the nine recommendations their suspense dates did slide from either November or December of 2015 to March or April of 2016.

Chairman HANNA. Okay.

Mr. ROARK. But I would say that they did provide narrative explanations, and it did appear that they were taking action. It was just an extension.

Chairman HANNA. Of the prime contractors that you identified that had a problem, were you able to go back in time and look at previous contracts that they had done to see if this is somehow systemic among those people that you identified who have essentially done something wrong? Were you able to go back? Did you go back?

Mr. ROARK. That was not part of the scope of our audit to go back and look at what a contractor had done in the past.

Chairman HANNA. It might be helpful though? I mean, especially with 4341 where you have an opportunity to have, as you said, some teeth. You know, liquidated damages. Have you ever assessed and received liquidated damages for any problems that you know of?

Mr. ROARK. These are the first two reports that I have ever issued that had liquidated damages in them, and I think it will be interesting over the next few months to see the response from the Marine Corps on the documentation that they took into consideration to make the decision on the RCO-NCR instance, and then for the recommendations in the Marine Corps Systems Command Report, their suspense date on those is April of 2016, so I will be eagerly awaiting their response on this.

Mr. SPENCE. Chairman Hanna, if I may respond to that. When I spoke to this contracting officer, he made the following quote. "In his 30 years as a contracting officer, he has never seen liquidated damages enforced." I think that is one of the problems we have. We have a compliance tool here, but yet, because it is very difficult to provide the evidence that they are not acting in a good faith effort makes it difficult to go after liquidated damages. And in his experience, he just has never seen that used. That is a problem.

Chairman HANNA. My encyclopedia over here. 1982 is the last time.

Mr. SPENCE. Wow, well, okay, that verifies it.

Chairman HANNA. Let me ask you a more nuanced question, anybody. Mr. Roark, you kind of deal with these people. You have a sense of a few phone calls you got. It sounds like this is a very systemic, or potentially the Marine Corps is relatively small compared to DOD at large, right? So is it a stretch to extrapolate that this could be, as you indicated, a huge problem that is just not being, I mean, you were lucky. In a couple cases you identified, these people who are misquoted were actually still small businesses, so there was not a real problem. But how do you feel about that? Anybody?

Mr. ROARK. Well, I think it is difficult, as you said, to extrapolate results from two reports on two Marine Corps contracting offices to the larger, the department. I think that we would have to do more work in that area, more audits to start to put those multiple data points up there to draw some of those conclusions. But I do think that that is something worth considering moving forward.

Chairman HANNA. Mr. Spence?

Mr. SPENCE. I would not throw the baby out with the bathwater on this. The system is working. Do there need to be tweaks? Yes. Most importantly as we have mentioned here is that we need teeth, we need more enforcement, and that is why my testimony had to do with providing more PCRs and more CMRs. Apparently, the contracting officers, for whatever reasons, are not paying as close attention to those subcontracting plans. So I think if we were able to provide more resources to that, that would be a huge step forward.

Chairman HANNA. Do you think though it is just a matter of not regarding it as an important part of the function? I mean, they are out there to get a job done; right? Put out a request for proposal, hire a company. And so the aspect of it that might be for minorities or small business falls to the wayside?

Mr. SPENCE. Contracting officers are, by nature, kind of risk averse. They make a procurement and they award a contract and they want to see the work performed. Sometimes their fear is if we move that down to a subcontracting plan to subcontractors, that workflow may be interrupted. And because there is no teeth in the enforcement, they kind of get away with that. I think if we put some teeth into that enforcement, give them the incentives, give them the time, give them the resources to ensure that there is subcontracting plans and that the goals are being met, I think that would resolve much of the problem.

Chairman HANNA. The problem is all of this is supposed to be done in advance.

Mr. SPENCE. That is correct. Yes.

Chairman HANNA. If the job is ongoing and they have not done their homework or have not done their due diligence, then almost by definition they put themselves in jeopardy as contracting officers because it is their fault.

Mr. SPENCE. Yes. I agree. I agree.

Chairman HANNA. Mr. Takai? Thank you.

Mr. TAKAI. Thank you, Mr. Chair.

I wanted to follow up on your questioning. I know that Mr. Roark, in terms of the IG, it is very difficult to extrapolate in terms

of how pervasive this problem is outside the Marine Corps. But let me ask you, Mr. Spence, the question is, you know, there are other branches in the military besides the Marine Corps. What do you think about the other branches? How pervasive is this issue?

Mr. SPENCE. Again, it is difficult for me to say because I am not, you know, I have not audited the reports. That is not the PTAC role. But again, I would think, and certainly hope, and I think evidence suggests that for the most part, these contracts are going forward. We know that small businesses are getting the subcontracting awards. We just think that with some tweaks and with some enforcement, more opportunities can be afforded to those small business subcontractors.

Mr. TAKAI. I agree. The question, I think that was the question that we were trying to ask.

To both of you, the audits revealed that in a variety of cases, prime contractors were failing to file their subcontracting reports. Can either of you tell me, based on your experience, what in the system allows this and how can we fix this problem?

Mr. SPENCE. One suggestion I would make with regards to the use of technology, with the Electronic Subcontracting Reporting System, maybe we can get a sharp programmer in there to make some modifications to provide an automated notice of failure to comply with reporting compliance. Because right now, the contracting officers, it is their job to acknowledge receipt of that report that the prime contractor puts in it. But if they do not check it, then nothing gets done and we do not know about that. So I am hoping that if we could automate some type of a notice of failure to comply, that might be very helpful. But short of that, it is the contracting officer's responsibility to acknowledge receipt of that report.

Mr. TAKAI. Mr. Roark?

Mr. ROARK. I think that contracting officer involvement is very important. I think that was the common thread that we identified in both audits that even though there are system prompts and so forth to give you notification, being engaged and verifying that the reports are actually submitted and then verifying that the reports are actually monitored and reviewed I think is probably the more important aspect of that.

Mr. TAKAI. Okay, and maybe for both of you, procurement center representatives (PCRs) and commercial market representatives (CMRs) are charged with ensuring that small businesses are afforded subcontracting opportunities. Is there any evidence that these advocates were involved in the contracting process at either of these audited offices for Mr. Roark? For Mr. Spence, any comments as well?

Mr. ROARK. I am not familiar with the titles of the two positions that you discussed. Are you referring to like small business office personnel?

Mr. TAKAI. Yes.

Mr. ROARK. Okay.

Mr. TAKAI. PCRs and CMRs.

Mr. ROARK. At both RCO-NCR and MCSC, we did meet with, interview, and gather information from the small business office personnel. We did see in both commands that they were involved,

working side by side with the contracting personnel to review the information that came in from the request for information from both large and small businesses, and so we did see that as a positive step, that they were engaged and working with the contracting officials.

Mr. TAKAI. Okay. Ranking member, as I mentioned, there are only 27 CMRs, and their job is, one of their main duties is to look for subcontracting compliance and counsel with small businesses regarding subcontracting opportunities. If there are only 27 of them, a lot of work is going to be missed. That is why it is PTAC's recommendation that that number be increased.

Mr. TAKAI. Okay. And I guess if you can just explain how does their involvement help in this process?

Mr. SPENCE. Well, again, short of a contracting officer, and that is their primary responsibility, but because of perhaps being overworked and understaffed, that might fall to the CMRs. And again, it is their responsibility, if you look in their job description, to look for subcontracting opportunities, to counsel with those subcontractors and to ensure compliance, and we think if we increased that that would resolve the problem, or at least in part.

Chairman HANNA. Thank you very much. You are both well prepared, and I am grateful for your time. I want to thank you, of course, for being here.

If there are no further questions.

As I have said before, given that hundreds of billions of dollars in Federal contracts are at stake each year, ensuring that small businesses have the opportunity to compete for Federal prime and subcontracts is key. Failure to meet the mandatory small business subcontracting requirements in prime contracts speaks volumes to the small business community. Failure of this nature calls the overall acquisition process into question. Seeing that agencies are not able to meet minimum requirements for contract award and administration, it also makes it clear that Congress needs to pass the reforms included, as you said, in 4341. I look forward to future reports from DOD IG, and hope that other agency IGs will also begin reviewing subcontracting compliance. You are both in a great position to help this Committee going forward. We do not need to have a hearing to hear from you. And I would suggest that if you have an opportunity, Mr. Roark, to really put some teeth into this. It is amazing that hundreds of billions of dollars since 1982, and there has been not a single case of liquidated damages, that is amazing in and of itself. I think you have an opportunity to help small business. You both do just by following through with the jobs that you already have. So if you see something in 4341 that you would like us to alter or tweak a little bit, I would ask you both to give us a call and we can amend things.

Go ahead.

Mr. SPENCE. Chairman Hanna, I think in 4341, it calls for the SBA to—I do not know what the right word is—to develop some system or procedure to help. When a contracting officer says that they have made a good faith effort, I think it stipulates that the SBA, to find some procedure to look at that and to determine whether or not they really actually have made a good faith effort.

And I think if the SBA can be charged to do that and hold them accountable, I think that will be very helpful.

Chairman HANNA. We have some difficulty with that from time to time. And you had mentioned earlier about electronic reporting being automatic.

Mr. SPENCE. Yes.

Chairman HANNA. That was in the National Defense Reauthorization Act of 2013. So there is an example of the difficulty associated with things. So we will look into that also.

I ask unanimous consent that members have 5 legislative days to submit statements and supporting material for the record.

Without objection, I want to thank you again, so ordered.

This hearing is adjourned.

[Whereupon, at 10:47 a.m., the subcommittee was adjourned.]

APPENDIX

===== February 25, 2016 =====



Expected Release

10:00 a.m.

Statement of
Michael J. Roark
Assistant Inspector General for
Contract Management and Payments
Department of Defense Office of Inspector General

before the

Subcommittee on Contracting and Workforce
Committee on Small Business

on

Small Business Contracting Challenges Identified During Audits of
Two Marine Corps Contracting Offices

Good morning Chairman Hanna, Ranking Member Takai, and distinguished members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss our two audits of Marine Corps small business contracting.¹

We initiated the two audits based on a Defense hotline complaint alleging that the Marine Corps Regional Contracting Office-National Capital Region (RCO-NCR) and the Marine Corps Systems Command (MCSC) did not ensure small businesses were awarded a sufficient number of contracts and did not hold large prime contractors accountable for meeting small business subcontracting goals.

Background

RCO-NCR is responsible for providing procurement and contracting support for the acquisition of supplies and services for the Marine Corps in 13 states, primarily in support of commands located near Washington, D.C. MCSC is responsible for providing research, development, and acquisition of equipment, information systems, training systems, and weapon systems to satisfy all approved material requirements of the Marine Corps.

Our objectives for the two audits were to determine whether RCO-NCR and MCSC provided small businesses the opportunity to be awarded prime contracts, and held prime contractors accountable for meeting small business subcontracting goals. During the audits, we reviewed a total of 86 contracts (valued at approximately \$1.6 billion) of 766 contracts (valued at approximately \$3.3 billion) that RCO-NCR and MCSC awarded to other than small businesses in Fiscal Years 2011, 2012, and 2013.

Overall, we found that RCO-NCR and MCSC generally provided small businesses with the opportunity to compete for prime contracts; however, contracting officials did not ensure that prime contractors provided small businesses adequate subcontracting opportunities. We made a total of 13 recommendations to RCO-NCR and MCSC to address the deficiencies identified during the two audits.

Opportunity Provided to Small Business to Compete for Contracts

For both audits, we reviewed contracts that were not awarded to small businesses to determine whether small businesses were provided the opportunity to compete for those contracts. RCO-NCR and MCSC generally provided small businesses with the opportunity to compete for prime contracts. At RCO-NCR, contracting officials conducted market research and advertised solicitations for 19 contracts (valued at \$239.2 million) while MCSC did the same for 21 contracts (valued at \$1.2 billion). After sending requests for information to identify companies capable of providing services and receiving responses for both large and small business, contracting officials and small business representatives from RCO-NCR and

¹Report No. DODIG-2016-019, "Small Business Contracting at Marine Corps Systems Command Needs Improvement," November 10, 2015, and DODIG-015-095, "Small Business Contracting Practices at Marine Corps at Regional Contracting Office—National Capital Region Needs Improvement," March 20, 2015.

MCSC determined whether small businesses demonstrated that they possessed the knowledge and capabilities to perform the requirement.

When only one responsible source exists, and no other supplies and services will meet agency requirements, the Federal Acquisition Regulation (FAR)² permits contracting without providing full and open competition. RCO-NCR awarded 20 contracts (valued at \$14.3 million) and MCSC awarded 16 contracts (valued at \$79.4 million) as sole-source contracts to other than small businesses. For the contracts awarded as sole source, RCO-NCR and MCSC prepared justification using exceptions to other than full and open competition allowed by the FAR.

Ensuring Small Business Receive Subcontracting Opportunities

RCO-NCR and MCSC contracting officials did not ensure that prime contractors provided small businesses adequate subcontracting opportunities. Specifically, RCO-NCR contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for 6 (valued at \$848.2 million) of 7 contracts (valued at \$871 million) reviewed. Specifically, RCO-NCR contracting officials awarded:

- four contracts, valued at \$58.2 million, either without requiring a subcontracting plan or with a subcontracting plan that did not include small business subcontracting goals; and
- two contracts, valued at \$790 million, which had subcontracting plans with small business subcontracting goals, but contracting officials did not monitor whether the contractor met the goals.

Those problems occurred because RCO-NCR did not have policies and procedures for evaluating and approving subcontracting plans or for monitoring contractor compliance with subcontracting plans. In addition, the RCO-NCR Director stated that contracting officials did not evaluate and approve subcontracting plans or hold prime contractors accountable for meeting small business subcontracting goals because the contracting office and the Small Business Office at RCO-NCR were understaffed and overworked.

MCSC contracting officials did not ensure prime contractors provided small businesses with adequate subcontracting opportunities for 12 (valued at \$222.1 million) of 19 prime contracts (valued at \$1.3 billion) reviewed. Specifically, MCSC contracting officials:

- did not track compliance with small business subcontracting goals for four contracts with individual subcontracting plans,
- did not determine why large businesses were not meeting their small business subcontracting goals on two ongoing contracts with individual subcontracting plans, and

² FAR Part 6, "Competition Requirements," Subpart 6.3, "Other Than Full and Open Competition," 6.302, "Circumstances Permitting Other Than Full and Open Competition."

- awarded six contracts without subcontracting plans or the required determination and approval.

In addition, MCSC contracting officials awarded two prime contracts, valued at \$421.9 million, with commercial subcontracting plans without verifying whether the plans had been approved by a contracting officer.

Those problems occurred because MCSC did not have adequate internal guidance for awarding contracts with subcontracting plans and for administering subcontracting plans. Additionally, MCSC did not implement effective internal review procedures for approving and administering subcontracting plans.

Status of Recommendations

In our two reports, we made 13 recommendations to RCO-NCR and MCSC to improve small business contracting procedures. Specifically, we recommended that RCO-NCR provide training to contracting officers on their responsibilities for evaluating and administering subcontracting plans, establish policy requiring contracting officials to obtain adequate subcontracting plans from prime contractors and verify that prime contractors submit subcontracting reports to the Electronic Subcontracting Reporting System, and determine whether liquidated damages may be recovered on two contracts. RCO-NCR has fully implemented all recommendations.

We recommended that MCSC determine whether the contractors for the six specified contracts made a good-faith effort to meet their subcontracting goals, and if not, whether liquidated damages may be imposed against the contractor; establish guidance for contracting officers for reviewing, approving, and administering subcontracting plans; and train contracting officials on their responsibilities for evaluating and administering subcontracting plans. MCSC agreed with each recommendation, and is in the process of completing corrective actions.

Conclusion

RCO-NCR and MCSC generally provided small businesses adequate opportunities to be awarded prime contracts. However, RCO-NCR and MCSC contracting officials did not ensure that prime contractors provided small businesses adequate subcontracting opportunities. We made recommendations to RCO-NCR and MCSC to improve procedures for administering subcontracting plans submitted by prime contractors. This concludes my statement and I would be happy to answer any questions you may have regarding our two audits.

Testimony of

**Chuck Spence, President
Association of Procurement Technical
Assistance Centers (APTAC)**

**To the U.S. House of Representatives Committee on Small Business
Subcommittee on Contracting and the Workforce
*“Hotline Truths: Issues Raised by Recent Audits of Defense
Contracting”***

February 25, 2016

Chairman Hanna, Ranking Member Takai and distinguished Members of the Subcommittee, thank you for this opportunity to respond to recent reports from the U.S. Department of Defense’s Office of the Inspector General that found that specific contracting officials with the Regional Contracting Office—National Contracting Region (RCO-NCR) and the Marine Corps System Command (MSCS) did not hold large prime contractors accountable for meeting small business subcontracting goals. I am privileged to speak before you on behalf of the Association of Procurement Technical Assistance Centers and the small businesses across the country that we serve.

My name is Chuck Spence. I am Deputy Director of the Utah PTAC and President of the Association of Procurement Technical Assistance Centers—APTAC—which is the professional organization of the 98 PTACs nationwide.

As you may know, the Procurement Technical Assistance Program was created by Congress in 1985 to help small businesses compete for federal, state and local government contracts. It is funded and administered through the Defense Logistics Agency and supported by state or local governments, educational institutions, and non-profits which must provide a non-federal funding match of up to 50% to be eligible for a PTAC Cooperative Agreement award. Our purpose is to assist local small businesses at little or no cost by preparing them to become capable government contractors, on the belief that a broad base of small business suppliers provides the highest quality and best value to our government agencies and at the same time creates a strong and vibrant economic base for our communities. Last year we helped over 57,000 small businesses win government contracts and subcontracts valued at over \$12 billion.¹

In addition to our work helping small business secure prime contracts, PTACs are deeply engaged with subcontracting issues. Not

¹Based upon statistics voluntarily reported to APTAC by 83 of the 98 Procurement Technical Assistance Centers.

only do we help small businesses identify subcontracting opportunities, connect with and market to prime contractors, and generally become responsible, “procurement ready” subcontractors, we are often contacted by large primes for assistance with developing subcontracting plans and locating small business vendors with the specific capabilities needed to meet their requirements. Every day, we confront with our clients the challenges of the subcontracting environment. My testimony today reflects input from some of our most experienced procurement professionals. I am privileged to share their insights in the hope they will support your efforts to improve opportunities for our nation’s small business contractors.

We are not surprised by the OIG findings in response to Defense Hotline allegations. On the contrary, we suspect that the problems identified—lack of adequate policies for requiring subcontracting plan submissions and reports, insufficient training for contracting officials regarding their responsibilities for evaluating and administering subcontracting plans, and failure to monitor compliance with subcontracting plans—are common across all federal agencies, because the root causes are not unique. From our perspective, at the heart of not only the circumstances described in the OIG reports, but agency subcontracting failures generally is an unrealistic overreliance on contracting officers to protect the interests of small businesses through faithful enforcement of FAR Subpart 19.7 with insufficient support and resources to do so. The consequence is likely a widespread loss of opportunities for small businesses.

We applaud Chairman Chabot, Ranking Member Velázquez, and the House Small Business Committee for the ambitious effort to address these issues through HR. 4341, *The Defending America’s Small Contractors Act of 2016*. The bill’s comprehensive approach to clarifying the language and definitions of contracting provisions in the Small Business Act—as well as promoting greater transparency in goaling and accountability in execution—is much needed. I’d like to comment on a number of provisions of this robust legislation that we think are particularly relevant.

Advocates for Small Businesses

The acquisitions workforce is an enormous, disparate, often overworked, and continuously shifting body. Their top priority is the procurement of goods and services to meet agency requirements in the most cost-effective manner possible so as to deliver value to the taxpayer. They are increasingly pressured to more effectively harness innovation and technology to better serve their end-users, while addressing new challenges such as cyber-threats. It is little wonder that understanding and enforcing small business subcontracting requirements might be prone to neglect—as is evidenced in the OIG reports.

SBA Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs) play a critical role enabling increased opportunities for small businesses, and the Committee is right to expand and clarify their responsibilities. Providing PCRs the authority to review “*any solicitation for a contract or task order*,” clearly articulating the responsibilities of Commercial Mar-

ket Representatives with regard to subcontracting, and allowing both PCRs and CMRs to delay acceptance of subcontracting plans if they fail to provide maximum practicable opportunities for small businesses are very important steps in empowering these officials to advocate on behalf of small businesses, and we enthusiastically support them.

We are concerned, however, about the level of effectiveness that can reasonably be expected from PCRs and CMRs if their ranks are not sufficient to do the job. A review of the SBA's CMR Directory at <https://www.sba.gov/content/cmr-directory> and PCR Directory at <https://www.sba.gov/content/pcr-directory> indicates that SBA has just 27 CMRs, 6 PCR Area Directors and 48 PCRs to service the entire country. An SBA Office of Inspector General Report in FY 2006 found that CMRs monitored less than half of the 2,200 largest prime contractors². In a 2008 report, the GAO noted that the 59 PCRs on staff at the time were acknowledged to be not a sufficient number to fulfill their mission³.

We believe that the need for these experts/advocates has grown and become more urgent—and are glad to see the Committee's support for them in H.R. 4341. But we'd like to encourage you to also take whatever action is within your power to support increasing the size of the PCR and CMR workforce to maximize their effectiveness government-wide. Taking the OIG Hotline reports as examples: PCRs might have been instrumental in helping the RCO-NCR and MCSC develop subcontracting policies and train acquisition staff as called for in the reports. Active involvement by CMRs might have brought to light and corrected failures to properly monitor subcontracting plan compliance before they resulted in Hotline complaints. The work of these professionals can directly address the deficiencies noted if they are sufficiently staffed.

Post-award Compliance Resources

We particularly note the Bill's requirements that the SBA make available—to a number of entities including the PTACs—*"a list of resources for small business concerns seeking education and assistance on compliance with contracting regulations (including Federal Acquisition Regulations) after award of a contract or subcontract."* We agree that supporting the ability of small firms to perform successfully is essential to small business contracting programs. While we welcome attention to the issue, we believe that PTACs are perhaps the most extensive resource available for just such education and assistance. With over 600 procurement professionals in 300 offices in every state of the nation, the District of Columbia and the territories of Puerto Rico and Guam, our charge clearly includes working with small businesses on post-award compliance issues, and we do so regularly. Most PTAC counselors have extensive—and ongoing—FAR training. We hope that the SBA will feature PTACs prominently on this list of resources, but also encourage PCRs, CMRs, OSDBU officers and prime contractors to refer small busi-

²SBA, Office of the Inspector General, *Review of SBA's Subcontracting Assistance Program*, Audit Report No. 7-33 (Washington, D.C.: Sept. 28, 2007).

³*Small Business Administration: Agency Should Assess Resources Devoted to Contracting and Improve Several Processes in the 8(a) Program*, GAO-09-16 (Nov. 21, 2008).

ness contractors to the PTACs, so that we can help them fully understand the requirements of their contracts and subcontracts, allowing them to successfully comply. We ask that the Committee remember that the PTACs can be a valuable resource in this regard.

Good Faith Compliance

We are pleased to see that fulfilling reporting requirements is being added to the list of items for which a prime contractor's failure to comply can be deemed a material breach reflected in past performance evaluations, and even more so the stipulation that SBA provide examples of activities that would be considered a failure to "*make a good faith effort to comply*". We hope that the SBA will use a fair but rigorous test; the current standard provides no incentive for primes to make extra efforts to include small businesses.

Past Performance

The "*Pilot Program to Provide Opportunities for Qualified Subcontractors to Obtain Past Performance Ratings*" addresses the critical need for small businesses to compile a record of experience to be competitive for prime contracts. We are particularly glad to see that the structure provides for the contingencies of non-response or disagreement between the contracting officer, the prime contractor, and the subcontractor. Our only concern about this provision is whether the additional administrative responsibilities will be attended to in a timely manner (as proscribed), particularly given the shortage of CMRs, whose participation is integral to the program.

GAO Review of the SBA's Office of Government Contracting and Business Development

A significant impediment to small business contractors is the complexity and redundancy of the various small business certification programs. The current conundrum with regard to the Woman-owned Small Business program only underscores the challenges of SBA certification processes from the perspective of both agency and small business. Small business concerns that are eligible to participate in more than one program (ie: a Woman Service-Disabled Veteran-owned small business operating in a HUBZone), faces overlapping but inconsistent requirements that can be overwhelming for a small firm. Simplifying and unifying the certification processes could go a long way toward bringing more eligible small firms into the government marketplace. Consequently, we are pleased to see the call for a Comptroller General study to identify ways in which SBA contracting programs and operations could operate more efficiently and consistently. We very much look forward to the report and would be pleased to provide input if appropriate.

Additional Issues

While not addressed directly in H.R. 4341, there are a few additional issues that we believe could be helpful in creating an environment that would support greater participation of small busi-

nesses in government procurement. I offer them here for your consideration as you contemplate future actions regarding small business contracting.

Technology

We believe that significant gains can be accomplished by better harnessing the technology systems associated with government contracting and subcontracting to automate certain functions and further increase transparency, especially in regard to compliance with subcontracting requirements under FAR 19.7. Compliance can only be enforced when failure to comply is known. The current necessity for busy contracting officers to proactively and manually monitor subcontracting compliance creates an administrative burden that may be a major factor in their failures to do so.

Strategic modification and integration of eSRS, FSRS, and other contracting data systems could provide to contracting officers and CMRs automated notices of failures to comply with eSRS reporting requirements, allowing officials to take immediate action with the contractor to spur compliance. Such a notification system could well have remedied—or even prevented—some of the deficiencies noted in the “Hotline” reports. In general, leveraging technology to make it as easy as possible for officials to enforce subcontracting compliance is likely to deliver the most effective enforcement.

Careful development of these data systems could also serve to improve public access to subcontracting data, with potentially a tremendous impact on small business access to subcontracting opportunities. Specific suggestions from some of our PTAC Members are included in Appendix A.

Motivating Prime Contractors

Meeting agency subcontracting goals would be much easier if prime contractors had a meaningful stake in their achievement. As noted above, there is currently no real incentive to comply with subcontracting requirements, and the enforcement of compliance via the assessment of liquidated damages has proven ineffective, as no firm has ever been penalized under it.

Finding alternative incentives (or disincentives) to prime contractor compliance could shift the balance by giving primes a clear competitive interest in providing and protecting small business opportunities. One of our PTAC members, Jeff Cuskey of the Montana PTAC, has put forth some suggestions in this regard for your consideration. They are included in Appendix B.

Conclusion

APTAC members believe there is a tremendous amount of room for increasing small business subcontracting opportunities, and we are happy to see the proactive, comprehensive effort by Chairman Chabot, Ranking Member Velázquez and the House Small Business Committee through *The Defending America’s Small Contractors Act of 2016*. Along with the important changes outlined in the Bill, we hope that sufficient personnel and technology resources can be

dedicated to effectively execute these critical programs, and we encourage the exploration of means to provide large prime contractors a clear interest in creating more opportunities for small business as well.

Thank you.

APPENDIX A

APTAC Member Suggestions for Technology System Enhancement to Support Small Business Subcontractors

- Provide for subcontracting opportunities to be posted well in advance of a prime contractor's selection of teaming partners and proposal or quote deadlines. Generally, a small business will not have much success becoming a subcontractor if they wait until the government solicitation is posted on FEDBIZOPS (FBO.Gov) since the turnaround time for a prime contractor to submit their proposals or quotes may be relatively short.
- Make subcontracting plan information publicly available upon prime contract award, which would allow small business subcontractors themselves, who have arguably the most powerful interest in effective subcontracting programs, to participate in policing the compliance of primes.
- Modify the ESRS reporting requirements to include a requirement that prime contractors update their SBA Subcontracting Directory data whenever any of the required 11 subcontracting plan elements change.
- Make ESRS data accessible to the public, turning the system into a "Dynamic Subcontract Plan Search (DSCPS)" database with search functionalities similar to SBA's Small Business Dynamic Search (DSBS) database. This could replace the current minimally functional Subcontracting Opportunities Directory and become the primary searchable data base for subcontract plans and subcontract plan points of contact. To enhance search capabilities, FAR 19.704(a)(3) could be revised to include the principal NAICS, PSC and FSC codes and associated key words—in addition to the current requirement of a description—related to the products and/or services to be subcontracted.
- Modify SUB-Net to include: (1) more non-construction related subcontract opportunities, (2) a means to further refine search results, (3) a way to filter out or eliminate advertisement postings and (4) the ability to export the file to an Excel CSV file to facilitate additional data sorting.
- Improve data fields in the Federal Procurement Data System (FPDS) to include original solicitation number and a meaningful description of the items acquired or the purpose of the contract action/modification. This would allow advanced searches within FPDS to locate products/services of interest to the small business.

Appendix B

Suggestions for Alternate Incentives/Disincentives for Prime Contractors to Maximize Small Business Subcontract Opportunities

Provided by Jeff Cuskey, Montana PTAC

(1) Provide monetary incentives for awarding subcontracts to qualified HUBZone or other targeted small business concerns (i.e., establish a HUBZone Incentive Program that would be similar to the current DoD Indian Incentive Program).

(2) Provide a price preference to large prime contractors that meet or exceed their negotiated small business plan goals. To reduce the administrative burden associated with such a program, the SBA could be required to issue an annual goaling report on all large prime contractors that were required to file subcontracting plans during the report year. Those large prime contractors that meet or exceeded their subcontract plan goals for the year would be afforded a ten percent price preference over large business offerors that did not meet their subcontract plan goals during the report period. The price preference could go on indefinitely if the prime continued to meet or exceed their annual subcontract plan goals in subsequent years. This approach would not require additional direct budget outlays, however SBA would most likely need additional resources to implement the program. The subcontract plan goaling reports should be posted publicly on SBA's website.

(3) Include the requirement to perform subcontract plan goal management and performance assessments in FAR Subpart 44.3 as part of Contractor Purchasing Systems Reviews (CPSRs). The current language at FAR 44.303(g) requires a review of the contractor's "planning, award, and postaward management of major subcontract programs," however this language does not require the review of a large prime contractor's subcontract plan management and performance. In addition to adding this requirement, the Subcommittee should consider requiring the withdrawal of a large prime contractor's purchasing system whenever the prime contractor has failed to meet its subcontract plan goals two years in a row. This "enforcement" approach and "penalty" provides a potentially feasible and enforceable alternative to assessing liquidated damages, as it would not be subject to the current stringent requirement to prove the contractor failed to act in "good faith".



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

MAR 31 2016

The Honorable Steve Knight
U.S. House of Representatives
Washington, DC 20515

Dear Representative Knight:

Thank you for your questions related to the February 25, 2016, testimony from Mr. Michael Roark, Assistant Inspector General for Contract Management and Payments, in our office.

You asked if any of the contracts reviewed for Report No. DODIG 2015-095, "Small Business Contracting at Regional Contracting Office-National Capital Region Needs Improvement," March 20, 2015, or Report No. DODIG-2016-019, "Small Business Contracting at Marine Corps Systems Command Needs Improvement," November 10, 2015, were awarded pursuant to either a DoD Mentor-Protégé Agreement or a Mentor-Protégé Agreement approved by the Small Business Administration. We initiated the audits as a result of allegations contained in a complaint submitted to the Defense Hotline, and focused the scope of the audit on addressing the allegations in the Hotline complaint. The allegations in the hotline complaint were that contracting officials did not hold large prime contractors accountable for meeting small business contracting goals, and senior leadership did not ensure small businesses were awarded a sufficient number of contracts. As neither program was addressed in the complaint, we did not address whether the contracts were awarded pursuant to either a DoD Mentor-Protégé Agreement or a Mentor-Protégé Agreement approved by the Small Business Administration.

You further asked whether the DoD Office of Inspector General anticipates reviewing contracts awarded pursuant to either program in the future. At this time, we do not have any audit work planned for either program, however, as we consider future audit work we will keep your interest in these programs in mind.

Should you have any questions regarding this matter, please contact me at (703) 604-8324.

Sincerely,

A handwritten signature in black ink, reading "Kathie R. Scarrah".

Kathie R. Scarrah
Director
Legislative Affairs & Communications

cc: The Honorable Steve Chabot
Chairman